CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 287.

FERDINAND EIDMAN, U. S. COLLECTOR OF INTERNAL REVENUE FOR THE THIRD DISTRICT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

MIGUEL R. MARTINEZ, AS ANCILLARY ADMINISTRATOR WITH THE WILL ANNEXED OF SALVADOR ELIZALDE, DECEASED.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED APRIL 8, 1901.
(18100.)

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1 United States circuit court of appeals for the second circuit.

FERDINAND EIDMAN, UNITED STATES collector of internal revenue for the third district of New York, plaintiff in error, *against* MIGUEL R. MARTINEZ, AS ANCILLARY administrator with the will annexed of Salvador Elizalade, deceased, defendant in error.	Error to the circuit court of the United States for the southern district of New York.

This cause coming on for final hearing before this court, certain questions of law arose, concerning which this court desires the instructions of the Supreme Court of the United States for its proper decision.

The facts out of which the questions arose are as follows:

Salvador Elizalde, a nonresident alien, a subject of the King of Spain who had never resided within the United States, died in Paris, France, on April 27th, 1899, leaving a will in the Spanish language, executed in Paris, in the year 1891, pursuant to the laws of Spain. This will was filed and protocolized in the office of the Spanish consul in Paris, and thereby under the laws of Spain and the consular convention or treaty between Spain and France, Arturo Elizalde, the sole legatee under said will, became entitled to the possession and administration of all the personal property of the decedent. Said Arturo Elizalde is the

2 only son and sole next of kin of the decedent, and is a non-resident alien and a Spanish subject. He has resided all his life in Spain and France, and has never resided in the United States. Said will purports to give all of the personal property of the decedent to his said son, but, by the laws of Spain, only one-third of the property passed by the will, and the remaining two-thirds passed to said son by and under the Spanish intestate law.

The decedent left certain federal, municipal, and corporate bonds, of the par value of $225,400, in the custody of his agents in the city of New York, and they were within the third collection district of New York at the date of his death.

After the filing of said will in Paris, Arturo Elizalde entered upon the administration of the decedent's personal estate, and appointed the defendant in error, Miguel R. Martinez, his attorney for the purpose of receiving ancillary letters of administration with the will annexed in the State of New York, and such letters were issued to him by the surrogate of New York County. After receiving such letters, said Martinez took possession of said bonds.

The United States Commissioner of Internal Revenue, under the alleged authority of the 29th and 30th sections of the act of Congress of June 13th, 1898, entitled "An act to provide ways and means to meet war expenditures and for other purposes," assessed an internal-revenue tax of $4,293.76 upon a legacy and distributive share arising from personal property in the hands of the administrator, defendant in error, who paid said tax to the United States collector of internal revenue for the third district of New York, plaintiff in error, under protest and upon compulsion of the collector's threat of distraint and sale, and made

the statutory application for its refund to the Commissioner of
3 Internal Revenue, who rejected the application. The administrator then brought this action in the circuit court of the United States for the southern district of New York against the collector to recover the amount of the tax.

The collector demurred; the demurrer was overruled, and a final judgment entered against the collector for the amount claimed, with interest and costs. The collector then brought the action into this court on writ of error.

The said questions of law which arose out of the foregoing facts are as follows:

1. Is any tax or duty imposed by the 29th and 30th sections of the act of Congress of June 13th, 1896, entitled "An act to provide ways and means to meet war expenditures and for other purposes," upon the passing of any legacy arising out of the personal property of a non-resident alien who has never resided or had a domicile within the United States, and who dies without the United States in the year 1899, leaving a will made and executed at his foreign domicile, pursuant to the laws thereof, by which he gives all his property to a nonresident alien legatee, and who leaves certain personal property within the State of New York exceeding $10,000 in value?

2. Is any tax or duty imposed by the 29th and 30th sections of the act of Congress of June 13th, 1898, entitled "An act to provide ways and means to meet war expenditures and for other purposes," upon the passing of any distributive share arising out of the personal property of a nonresident alien who has never resided or had a domicile within the United States, and who dies without the United States, in the year 1899, intestate, and by the law of his foreign domicile all of his personal property passes to his son, also a nonresident alien, and who leaves certain
4 personal property within the State of New York, exceeding $10,000 in value?

In accordance with the provisions of section 6 of the act of Congress of March 3, 1891, entitled "An act to establish circuit courts of appeal and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," the foregoing questions of law are by the circuit court of appeals for the second circuit certified to the Supreme Court of the United States; and

It is ordered that the clerk transmit the foregoing certificate under the seal of this court to the clerk of the Supreme Court of the United States at the city of Washington.

Dated March 25th, 1901.

WM. J. WALLACE,
E. HENRY LACOMBE,
N. SHIPMAN,
Judges of the United States Circuit Court of Appeals for the Second Circuit.

5 UNITED STATES OF AMERICA,
Second Circuit, ss:

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing certificate in

the cause entitled Ferdinand Eidman, United States collector, etc., against Miguel R. Martinez, as ancillary administrator, etc., was duly filed and entered of record in my office by order of said court on the 29th day of March, 1901, and, as directed by said court, the said certificate has been by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court this 29th day of March, in the year of our Lord one thousand nine hundred and one.

[SEAL.] WM. PARKIN,
Clerk of the United States Circuit Court of Appeals
for the Second Circuit.

6 Indorsed: United States circuit court of appeals, second circuit. Ferdinand Eidman *v.* Miguel R. Martinez. Certificate. United States circuit court of appeals, second circuit. Filed Mar. 29, 1901. William Parker, clerk.

(Indorsement on cover:) Office Supreme Court U. S. Received Mar. 30,1901. (Certificate.) File No. 18,100. U. S. C. C. of Appeals, 2nd circuit. Term No. 645,287. Ferdinand Eidman, U. S. collector of internal revenue for the 3rd district of New York, plaintiff in error, vs. Miguel R. Martinez, as ancillary administrator with the will annexed of Salvador Elizalde, deceased. Filed April 3rd, 1901.

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